IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 234 OF 2006

IN

WRIT PETIION NO. 2192 OF 2002

Hemant Manohar Deshpande ... Appellant

Versus

M/s. Schlumberger Asia Services Ltd. and anr. ... Respondents

Mr. Amogh Parlikar, instructed by Mr. M.D. Nagle, for the appellant.

Mr. S.K. Talsania, Senior Advocate, with Mr. R.N. Salgaonkar, instructed by M/s. Salgaonkar & Co., for respondent No.1.

CORAM: **KSHITIJ R. VYAS, C.J.** & **ABHAY S. OKA, J.**

DATE: **JULY 10, 2006**.

P.C.

The appellant has challenged the order dated October 5, 2005, passed in Writ Petition No. 2192 of 2002, whereby the learned single Judge has dismissed the petition filed by the appellant and confirmed the Award dated 11th January, 2002 passed by the Presiding Officer, Eleventh Labour Court, Mumbai, in Reference (DA) No. 1279 of 1995. By the said Award, the Labour Court partly allowed

the Reference and directed the first respondent to pay to the appellant compensation equivalent to 33 months wages for loss of future employment, to be deposited in the Court within a month from the date of the publication of the Award.

2. The learned counsel for the appellant has submitted that the Courts below have committed an error in not granting reinstatement of the appellant on the ground that he is handicapped. The learned counsel for the appellant has submitted that in view of the declaration on the rights of disabled persons proclaimed by General Assembly Resolution 3447(XXX) of 9th December, 1975, the petitioner is entitled to rehabilitation. According to the learned counsel, under the said Resolution, a right is conferred on the disabled persons to secure and retain employment and in view thereof, the appellant is entitled to have reinstatement. Our attention is also invited to a decision of the Apex Court in the case of *Vishaka and others* vs. *State of Rajasthan and Ors.*, AIR 1997 S.C. 3011, wherein the Apex Court has observed thus:

> "It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no

inconsistency between them and there is a void in the domestic law."

There cannot be any dispute with respect to the convention proclaimed by the General Assembly. However, the question arise for our consideration is as to whether the appellant is entitled to have reinstatement with the first respondent. The appellant was appointed with first respondent as a Junior Operator/Field Operator w.e.f. 1st November, 1992. The first Respondent Company is engaged in the business of off-shore service i.e. wire line and testing of oil-fields and other related activities. While on duty on 25th May,1993, the appellant has suffered severe pain on his back. The appellant took medical treatment from various doctors including Physiotherapy treatment and was advised to provide light duties for speedy recovery. Even though the appellant worked and performed light duties upto 5th December, 1993, the services of the appellant came to be terminated with effect from 9th December, 1994 on the ground that as the appellant remained without any work for one year, the Company could not afford to continue the appellant to go on paying wages without any work. In substance, the services of the appellant came to be terminated by the first respondent on account of his ill-health and incapacity to perform his duties as Junior Operator/Field Operator. The Labour Court after

considering the evidence on record held that the termination is legal and proper.

3. In view of the above facts, when the Courts below have recorded a concurrent finding that the appellant is unable to perform his duties, this Court, sitting in Appeal, cannot direct reinstatement of the appellant in the services of the first respondent. The contention raised before this Court was not raised before the courts below. The provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, would not apply in the case on hand as the appellant's services were terminated prior to enactment of the said Act. We have in fact made a suggestion to the first respondent, through the learned counsel, to provide reemployment to the appellant with light work. However, the learned counsel appearing for the first respondent submitted that after a period of 15 years from the date of termination, it would not be possible for the first respondent to provide re-employment to the appellant. Under the circumstances, it is not possible for us to interfere with the impugned order. We, however, direct the Labour Court, Mumbai, to permit the appellant to withdraw the amount equivalent to salary of 33 months already deposited by the first respondent together with the interest

accrued, if any, thereon within four weeks from today. The appeal is accordingly disposed of.

CHIEF JUSTICE

ABHAY S. OKA, J.